

## **MEETING SUMMARY**

### **FIRE ISLAND NATIONAL SEASHORE OFF-ROAD DRIVING REGULATIONS NEGOTIATED RULEMAKING ADVISORY COMMITTEE SESSION IV**

**May 9 and 10, 2003  
DOWLING COLLEGE, BROOKHAVEN CAMPUS**

**Attendees:** See attached attendance list of Principal Representatives, Alternates, Technical Advisors, and individuals who provided public comment.

#### **DAY ONE**

##### **Review Draft Agenda / Introductions / Review of Work to Date**

The fourth session of the Fire Island National Seashore Negotiated Rulemaking Advisory Committee for Off-Road Driving Regulations (“The Committee”) began at approximately 9:15 AM with opening remarks by the mediators and a review of the Draft Agenda by the Committee. Barry Sullivan introduced the new Superintendent of Fire Island National Seashore, David Spirtes.

##### **Status of Committee Representative Appointment Process**

An attorney with the Office of Regional Solicitor, Department of Interior, reported that the appointment of nominees submitted to fill vacancies on the Committee (See Session II Meeting Summary) has not yet been made by the Secretary of the Interior. A stakeholder expressed strong concern that they were not notified earlier of this issue and that the appointments have taken so long.

The mediators explained that the Committee has and will continue to allow the full participation of the nominees in the Committee deliberations and the fact that some are not yet appointed by the Secretary should have no negative impact on the negotiations

##### **Setting the Stage for Consensus**

The mediators reviewed the Negotiating Committee “Framework” for Consensus Agreement, “Principles of this Negotiation” and “Principles of Regulation”, all agreed to by consensus of the Committee at prior sessions for the purpose of guiding them in the drafting of the Fire Island National Seashore Off-Road Driving Regulations.

The mediators further reviewed the Negotiating Committee Groundrules adopted by consensus of the Committee at Session II, particularly with regard to Section III: Decision Making and Section IV: Agreement. They explained the concepts and procedures for reaching tentative versus final consensus of the Committee. The mediators explained that, as the Committee approaches agreement on individual topics, the mediators will check for tentative consensus. The Committee will make the decision whether to go from tentative to final consensus at a later time, probably after it has reached tentative consensus on as many of the topics as possible. This two-stage process allows Representatives to build a comprehensive agreement, section by section, while acknowledging that Representatives may choose to finalize the consensus only after ensuring that the complete package addresses their most important interests. If the Committee reaches final consensus on any or all of the issues, the NPS will use the final consensus agreement as the basis for drafting its new regulations in accordance with the groundrules. The draft regulation will be published in the Federal Register for public comment. Committee member organizations and their Representatives will refrain from commenting negatively on the consensus-based language.

**Presentation of Revised Draft Consensus Agreement by Mediators**  
**Status Report: Brief description of feedback re: Draft Consensus Document**

The mediators gave a brief overview of the development of the current Draft Consensus Agreement and provided the mediators' rationale behind each section of the single-text document. This Draft Consensus Agreement was developed by the mediators as follows:

- A first draft was developed by the mediators during winter/spring 2003 through conversations with stakeholders via phone;
- The Draft Consensus Agreement dated 30 April 2003 was circulated for Committee comment;
- Revisions were made to that draft pursuant to comments received from Committee representatives;
- The Revised Draft Consensus Agreement dated 8 May 2003 was distributed to the Committee for this negotiating session at the session.

The mediators encouraged the Committee to first work toward consensus on the concepts presented, rather than the language in detail, noting that the language can be fine tuned later. The Committee discussed the Draft Consensus Agreement (dated 8 May 2003). Committee Representative comments regarding the draft consensus agreement follow each key topic area. In this and all summaries of the Committee's deliberations, perspectives not identified as Committee consensus represent the views of participants, not necessarily the Committee as a whole.

### *Numbers of Permits:*

Permit Category	Allowed per Blue Book	Actual Current # as Presented by NPS	Proposed # from Draft Consensus Agreement
Year-Round	145	138	145
Part-Time	100	77	77 down to 25 Allowing for retired municipal cross-over after 25 years.
Contractors	80	80	110
Utilities/Essential Services	>30 (for fleets, not individual vehicles)	21 Key/LIPA 16 Verizon 48 Various	Utilities 45 Essential Svces 20 (30 electricians and plumbers to go to contractor category)
Municipal	105 (possible, but few qualify for definition)	5 Ocean Beach 6 Saltaire 4 Pt. O'Woods	30 maximum
Official	—	1 FI Ferries 14 SCWA 15 Vector Control 10 Suffolk Cty 2 Islip Housing	25 (SCWA become utility permit)
Special			Issued by Superintendent
TOTAL	460	437	400

The Committee made several points regarding these categories.

### *Fleets of Utility/other vehicles:*

- Technology could be used for a gating process that allows only 3 or 4 vehicles from a fleet on the Island at any one time. An electronic system is already in place that could be built upon to monitor trips and assist with enforcement efforts.
- Utility may be open to fleet permitting in a cost-per-entry arrangement. NPS noted that it does not currently have per-trip fee-collection authority, only recoverable cost authority
- SCWA noted that it differs from other utilities in that it requires daily access to pump stations.
- Utilities have made efforts to reduce driving including: use of “mules” by SCWA; automated and self-read electric meters by LIPA.
- The number of utility permits is not indicative of total traffic. Flexibility is needed to have the appropriate vehicle on the Island depending on the circumstances. Utilities cannot commit to a fixed number of entries per year.
- Utilities can bring whatever vehicles are needed in order to respond to emergencies.

### *Municipal Permits:*

- Municipal permits are not heavily used now, so any reduction in number of permits will not significantly reduce driving. Some municipalities only drive in the winter.
- Develop incentives to encourage driving reduction among municipalities, utilities and essential services.
- Assign a set number of municipal permits to the towns/villages to issue as they wish.
- Use the existing definition of municipal permit and allocate one to each community for civic duties.
- Could have a full-time paid municipal employee category and one additional permit for official civic duties during the driving season when boats are not running.
- Originally, the municipal permits were issued to those employees who resided on the Island and were awaiting their year-round permits. It was suggested that municipal employees who fit the year-round resident requirements be allowed to be on the waiting list and then retire their municipal permit once they receive their year-round permit. This does not address the ability of municipalities to hire off-island or part-time employees.
- It is important to allow municipal workers who have held a municipal permit to cross-over to year-round permit status upon retirement. What will happen if the limit of 25 is full?
- How should "community" be defined? Unless we adhere to the original communities in the authorizing legislation, it will be difficult to set a fixed number of permits in this category.
- There is a difference between those municipal employees who need a vehicle to perform their job and those who need to get to a fixed place of work. For the latter, there should be incentives for using alternative transportation.

### *Essential Services:*

- Some with Essential Services permits use the permits for other purposes - there is abuse and a lack of enforcement.
- If the plumbers and electricians (currently designated as essential services) are moved to the contractor permit category, the number of permits in that category must be increased.
- All agree that bottled gas is an essential service, and should be transported to the Island by water whenever possible. (But it needs transporting after it reaches the dock.)

### *Carters*

- It was suggested that Carters permits be capped at 3 per company.
- Before this category of permits can be reduced, alternative ways of removing trash must be developed. Some towns/villages do not have the available land to create garbage staging areas.
- West End will need to purchase land in order to create a facility to move trash out by water.
- Would NPS donate land back to the town for this purpose?
- There are two docks currently in Fair Harbor and Seaview from which trash can be ferried off. However, traffic must go through the towns to cart it there, so this will not necessarily reduce driving.

#### *Contractor/Business:*

- Retail store owners whose businesses are at the dock should not receive a permit to drive. The fixed-site businesses should be separated from the businesses that require travel by their nature.
- Real estate broker travel should be more closely scrutinized.
- Permits should not be taken away from those who legitimately have them, and those folks should not have to reapply every year with the risk of losing it so that businesses become a year-by-year risky venture.
- The distinction between on- and off-island contractors must be further addressed.

#### *Part-Time Permits*

- The greatest number of rule violations falls within this category.
- Part-time permit holders are generally away from the Island during the winter and this reduces overall driving.
- Municipal and part-time permit categories should be separated.

#### *Year-Round Permits*

- Currently, the system is abused by some who have these permits, but are rarely on the Island.
- Regarding the numbers of permits and/or trips provided by NPS, they do not take into account the back and forth shuttling of people from the parking lots and the inter/intra-community driving. NPS numbers only reflect trips in and out of the two NPS gates.

#### ***Geographic Areas or Zones of Driving and When Driving is Allowed***

- In the West End, there is no need to restrict driving on the beach from November 1 to March 15 with the exception of reasons pertaining to the Endangered Species Act (ESA): species and/or suitable habitat for ESA species.
- NPS noted that ESA habitat restricted areas could be designated by "symbolic fencing" or kite string between poles. This area would likely be within the 20 foot zone where driving is already prohibited. Otherwise, driving would need to be re-routed inland.
- Regarding "suitable habitat" under ESA, FWS noted that examples include areas in Cherry Grove and Sailors Haven where there is some habitat suitable for breeding purposes, although this will vary due to changes in the landscape. An assessment is done each year in March/early April to determine these areas. Overall, land management all across Long Island is based upon historical nesting sites and other data.
- It was noted that while the Draft Consensus Agreement depicts three geographic zones, there are only two entry points and the central communities are closest to the West entrance. Only three communities are closest to the East End entrance.
- The West End residents would object to an increase in traffic.
- East End driving options suggested included: 1) driving only from November 1 to March 15 with no shoulder season; and 2) no driving at all with a shuttle service available from November 1 to March 15.

- Regarding the area of Sunken Forest, the language in the deed is interpreted as no new roads, but there is some travel through the area limited to off-road routes for passage. Also, no roads are permitted through the Wilderness Area. A continuing question regarding beach driving in front of this area remains. Currently, only Park maintenance vehicles are permitted to drive in this area. The issue of concern is resource protection. If the Park were to be the managing entity for a shuttle service, this would be consistent with both the enabling legislation and the Wilderness Act, as the use of a shuttle system between Davis Park and Smith Point could arguably be viewed as "park maintenance."
- The current system has not provided NPS with assurances that the resource is being adequately protected.
- Emergencies will always remain the exception.
- Recreational vehicles are able to travel the beach and the concern about impact on the resource should be considered no matter what the vehicle type even though recreational vehicle permits are outside the charge of this Committee
- Funding for a shuttle may be available through the Department of Transportation Highway Trust Fund and other sources of funding for alternative transportation. It was suggested that supporters of this idea could assist in seeking and procuring the necessary funding.
- Resource protection could be accomplished instead under Option 1) above, with electronic gates, education and symbolic fencing.
- Which option has the least environmental impact? E.g. if utilities are included in the shuttle system, the vehicles would need to be large enough to carry heavy equipment in addition to people.
- If the shuttle were easy to use, it may attract even more people which would necessitate additional trips.
- NPS noted that an escort or guide service provided by NPS does have some merit and would be preferable to the present "honor" system.

### ***Beach Closures***

- It was noted that the discussions surrounding the creation of the Wilderness made clear it was intended to assure that a closure did not become a barrier to driving across the Island outside the Wilderness Area.
- Any closures referenced in a Consensus Agreement may depend upon how the East End driving issue is resolved.
- This section does not prevent NPS from closing other beaches in the future.

### **Law Enforcement Driving**

The mediators reported that the NPS and SCPD have been working through the issue of SCPD driving on Fire Island beaches. They agree that, as under current rules, no permit will be necessary for law enforcement vehicles. They also agree that SCPD officers who drive on Fire Island shall receive a driver's awareness training at least once a year. Negotiations regarding the

issue of compliance with driving restrictions for natural resource protection are continuing and are not expected to be resolved in this Committee.

There was further Committee discussion on the question of law enforcement driving. On the second day of this negotiating session the Committee agreed, by tentative consensus, that SCPD activities, other than emergencies, will be addressed by the SCPD and the federal government apart from the work of this Committee. See page 14 below.

The SCPD stated that it has adopted policies and procedures in the past to address natural resources concerns and pledged to continue to the extent possible without compromising public safety and homeland security. The SCPD further stated that, as a result of information received from Committee Representatives, responsive measures were taken, including: eighteen new hires; a patrol boat on the East End which frees up central and West End officers who will be put on foot patrol to reduce driving in those areas. In addition, the SCPD will try bicycle patrols (noting that bicycles cannot carry emergency equipment or travel on the beach), increase police protection in needed areas and decrease response time. An additional boat is also expected. The SCPD noted that homeland security is the nation's priority and that Fire Island constitutes a significant coastline. While they have abided by ESA closures in the past, those past policies and procedures are no longer applicable, and this issue will need to be resolved at a higher level than this Committee. The SCPD invited Committee members to accompany them on their patrols on Wednesday, May 14, 2003.

### **Public Comment**

Sidney Maddock of the Center for Biological Diversity urged the Committee to adopt an approach of no driving within 20 feet of the toe of the dune with the exception of the two communities without sufficient dune. Citing overwhelming research, he stated that science, the law, and the enabling legislation support this, not only with regard to piping plovers, but numerous other plants and shorebirds. Moreover, he stated that the ESA is binding upon all persons, including NPS, FWS, and County Agencies with no exceptions. He expressed concern that symbolic fencing in the Wilderness area is not compliant with the Plover Recovery Plan. He stated that the Rhizome Rule is based on a barrier beach being a static entity; however, any significant storm will change that landscape. In addition, it does not recognize wrack as a valuable habitat and food source.

### **Adjourn**

The Committee adjourned on day one at approximately 5 PM.

## **DAY TWO**

### **Review Draft Agenda Prepared by Mediators after Day I**

The mediators reviewed their proposed agenda for the second day of Committee negotiations. It was announced that the Ferry Company provided a letter to the Committee listing ferry schedule guidelines for the Committee to consider in their deliberations. It was further noted that the Ferry Company representatives were unable to attend the meeting due to this very busy season.

The SCPD requested a caucus of "law enforcement supporters." A member of the public requested, but was denied, entry to this caucus and asked that this be noted in this meeting summary.

The Committee continued its work from Day One, discussing the Draft Consensus Agreement (dated 8 May 2003) section by section, and raised issues within the following key topic areas:

### **Kinds of Permits and When in Terms Of Seasons Driving is Allowed**

#### ***Year-Round***

- Restrictions currently differ between Islip and NPS. If they are made to be consistent, can both Islip and NPS enforce the other's regulations?
- If a trip is counted at Field 5, it will cut down on driving.
- The current year-round is based on the school schedule and ferry service. Is there a way to separate out those families with school-aged children?
- Clear and understandable regulations codified at both the local and federal level will help with enforcement efforts. Need uniform rules that apply to everyone in order to enforce them. The differences in rules promote the abuses.
- Regulations should be more general rather than trying to meet the particular needs of everyone.
- Concrete regulations will take away some of the current flexibility for year-round residents to call NPS for permission.
- The Ferry companies have said that they will accommodate if clear needs are articulated. Certainty is very important to the Ferry Companies.
- Inter and intra-community driving is a big issue. Permits should be really obvious in terms of display and residents should be educated about what the permits mean all to assist in enforcement.
- Year-round permits should be linked to school dates and adequate ferry service. The Park or the Municipal Board could set the dates each year by mid-winter.
- The gate entry system could be programmed to open or not depending on the available ferry service or could be a live person.
- Adequate ferry service is different from one end of the Island to the other. E.g. the last boat leaving from Cherry Grove in winter is 4:40 and from Davis Park at 3:55. East Enders may be willing to pay more for adequate service, perhaps a second boat.
- Adequate Service is no longer an 8 and 1/2 hour day - the workday is now dawn to dusk.



- Allowances for drivers with school aged children has become de facto an allowance for all year-round drivers, regardless of whether they have children or not.

The following proposals emerged as a result of this discussion:

- 1) The driving period for year-round and part-time residents should be the school year. However, during the shoulder season (because of intercommunity concerns) between the school start and September 15 and the school end and June 15, there would be no driving between 9AM and 6PM and the number of trips would be reduced to 1 per day.

OR

- 1A) During the shoulder season between the start of school and September 15, permit holders would be allowed 1 round trip per day, and on the weekends, there would be no driving between 9AM and 6PM. During the periods from September 15 to June 15, permit holders would be allowed 2 round trips, except on weekends starting the Friday before Memorial Day, when weekend restrictions would apply.
- 2) For Beach driving, there should be three types allowed: 1. Emergency response (police, fire and ambulance with no tide restrictions; phone, water, and multiple power outages on the beachfront where there is no Burma Road; 2. When the Bay is non-navigable or iced-over - where there is no Burma Rd. Three types of driving should not be allowed or should be phased out: 1. Driving along Wilderness area except for NPS (possibly a shuttle) and emergency; 2. Fuel deliveries by boat only; 3. Phasing out most of remaining beach driving except in rare and extraordinary circumstances.
- 3) Each person could receive an "individual transferable quota" (ITQ) which could be traded, sold, etc., but would put a cap on driving. (However, this could lead to more utilization of all possible trips).

### ***Contractors***

Currently, Contractors drive from November 1 to March 1 or 15. On-Island Contractors drive until later in the spring, and most believe they can drive through the school year. Off-Island Contractors may also work later into the spring depending on the location of the work. Extensions are also given depending on ferry schedules. The group noted that inconsistencies in permits and extensions lead to great confusion around complying with and enforcing driving regulations in this category. There was not agreement on when contractors are and are not allowed to drive currently.

It was suggested that the same requirements apply to both On- and Off-Island Contractors, with no driving from Labor Day into October, but more driving earlier in the spring to May.

## **How Administering the Regulations Might be Shared Among the Park and the Communities**

It was proposed that the NPS, municipalities, and other communities within the Park work together to establish a coordinating board. This Board would not create, but would cooperate with NPS to administer the regulations and help manage driving within the Seashore. NPS has expressed the importance of having one permit application process and noted that such a board could assist with all of the details that would not necessarily be a part of the federal regulations. For example, if the local and federal regulations are uniform, the Park would not issue a permit unless first issued by the Board; and, if the Board were to revoke a permit, the Park would support that decision. In the federal regulations, NPS would authorize the Board to have specified authority over community-based issues. Currently, NPS works with four, sometimes conflicting, permit systems - one purpose of the Board would be to unify that process.

An attorney with the Office of Regional Solicitor, Department of Interior, stated that there is a clear legal mechanism in the State of New York to create this type of inter-municipal agreement and technical assistance available through state government services. The Board would be created under NY State law but not by the state itself. NPS could not be a voting member of this type of board. However, NPS could participate in other ways, for example, by providing coordination, technical assistance, and serving as a communication link.

The following comments were made:

- Environmental and Conservation interests should be represented on this Board.
- The Port Jefferson Harbor Commission was cited as an example of this type of board, where a single set of programs are committed to by the board, comprised of a representative appointed by each municipality, who meet quarterly to address issues of common concern.

A subgroup of the Committee caucused briefly over lunch to develop ideas for the make-up of and potential roles for a non-regulatory Board with administrative and coordination functions. They put forward the following list of ideas.

Possible Membership: (to address coordination)

1. Incorporated villages and towns
2. Ex officio members, including NPS, SCPD, FILE
3. Ample year-round resident representatives

Possible Roles and Tasks:

- Paid Administrative person, potentially
- Ferry coordination
- Communications - towns, year-round and seasonal residents, law enforcement
- Co-meshing Islip and Brookhaven permits: Not issuing, but integrate the two towns lists into one waiting list.
- Identify more clearly the application process
- Could be web/internet based

- Apply for federal money, e.g. T21 funding for alternate transportation systems and planning (NPS cannot apply, but a state-recognized entity can)
- Appoint subcommittees, including representatives of environmental groups and other stakeholders

### **Weight Limits for Essential Services**

NPS encouraged the Committee to reach consensus on the vehicle size requirements, noting that the regulations will not go into effect for years, allowing everyone to make the appropriate vehicle purchase plans in the meantime.

It was noted that weight of the vehicle is not the only issue, but safe maneuverability is also important.

### **Land Exchange Process**

The attorney with the Office of Regional Solicitor, Department of Interior, provided a response to an earlier question about whether the federal government could transfer land to the communities in order to create staging areas for carting trash by boat rather than vehicle. The attorney stated that land exchanges are allowed under existing federal law and was done in the past at Cape Cod National Seashore for a landfill site. It is an exchange, however, not a donation, and it must be deemed an equal exchange of value supported by appraisals, environmental and public review. In this situation, the properties that would most easily constitute an equal exchange are those ocean front properties in private hands. Individuals, municipalities or a consortium of communities could exchange with the NPS land already owned or acquired for this purpose. The attorney further reported that a lease agreement for this purpose would not suffice, as NPS would be giving undeveloped land in exchange for nothing of substantive fee-simple value in return.

The attorney commended the group on its overall progress and stated that from now until September, NPS will receive the Committee's input in a consensus-based way. After the Committee Charter expires on September 1, 2003, NPS will no longer be able to work with the Committee as a group.

### **Potential Areas of Agreement Pursuant to Committee Discussions in this Session IV**

The Draft Consensus Agreement (dated 8 May 2003) was further reworked by the mediators, incorporating many of the ideas and concerns expressed by the Committee during the course of the first day and morning of the second day of this session into Areas of Potential Agreement. This Areas of Potential Agreement encompassed many but not all of the issues in the more inclusive Draft Consensus Agreement. This Areas of Potential Agreement was not a distributed document, but was presented to the Committee on a projector screen by the mediators. The

Committee discussed and, in some instances, revised the language to achieve tentative consensus on as many sections as possible. The mediators highlighted several areas of potential agreement where a tentative consensus may be reached today; recognizing that there may be others where tentative consensus can be reached with additional work beyond this negotiating session if the Committee wishes to continue.

The text appears below for the items discussed. If tentative consensus was reached on a particular section, it is so designated as "TC". Several sections/issues of the draft Consensus Agreement were not discussed during the afternoon session seeking tentative consensus, and thus, this is noted. Mediator notes are in *italics*.

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## **POTENTIAL AREAS OF AGREEMENT:**

### **I. C. Are permits issued to individuals, organizations, or vehicles?**

The Park will issue permits to vehicles except for utilities, where the Park will issue a permit to each of the fleets. Utilities will work with park to reduce overall driving by utility companies within the National Seashore.

TC

### **I.D. How is a "trip" in the regulations defined?**

A trip shall be defined as one pass in and out (round trip) of the Fire Island National Seashore boundary/gate (NPS).

TC

*Clarification is needed with regard to the boundary/gate.*

### **I.E. How can the incorporated municipalities and the Park best coordinate the administration of the permitting system?**

The National Park Service, the Towns of Islip and Brookhaven, and the communities within the Park recognize that implementing and maintaining an effective driving permit system is a joint responsibility. It would be to the benefit of the Island as a whole and the Park to establish a board to help provide, at the least, coordination and communication among the various entities concerned about managing driving on Fire Island. As the federal regulations are developed and the incorporated municipalities are revising their own regulations accordingly, the incorporated municipalities and the Park will establish this board to aid in communication, coordination, permit application, and/or administration of driving within the Park. This entity would supplement and would not replace nor supercede the authority of the National Park and the municipalities to develop, promulgate, and administer their regulations as provided by law.

TC

### ***I.G. Are any beaches closed to driving year-round?***

In order to protect the natural resources and character of beaches directly adjacent to some federally owned parcels, the Park will close the Lighthouse Beach, Sailors Haven Beach, and a portion of Watch Hill Beach to vehicles requiring permits as long as the Park provides appropriate dune crossings and an adequate inland off-road route to ensure passage across the federal land on these parcels. The Park may close the Talisman/Barrett Beach under the same conditions. The Park agrees that these closures will not

interfere with the safe and adequate passage of motor vehicles across these parcels on at least one designated off-road route and that the Park shall not use this authority to de facto prevent vehicular passage across these areas. *Further discussion needed regarding the wording ("portion of Watch Hill Beach " and Sailor's Haven Beach ").*

## ***II. How will categories of permits be defined and how many permits will be granted to each category?***

The Park shall work with the incorporated municipalities to further detail the definitions for categories of permits. In general, the definitions would be as follows:

Public Utility: any public utility or public service company that provides, contracts, franchises, or licenses the delivery of water, electricity, and telephone. Three (3) fleet permits will be granted. Electricity and Phone utilities will drive year-round with no more than two trips per vehicle per day with no weekend driving except for emergencies and restoration of services.

TC

Year-Round Resident: persons who are legally domiciled on the island and who, in addition, physically reside in their fixed and permanent homes on the island continuously for 12 months of the year, except for brief, occasional, and infrequent, absences. Up to one-hundred-forty-five (145) permits will be granted

TC

Year-round residents may drive from the beginning of the school year to the end of the school year. From June 1 until the end of the school year and from beginning of school year until September 15, there will be no weekend driving between 9:00AM and 6:00 PM and the number of trips per day will be limited to one (1). *Further discussion is needed regarding driving start and stop times.*

Part-time Resident: Persons who 1) physically and continuously reside in their homes on the Island for less than 12 months of the year, and held a residential permit as of January 1, 1978 or 2) held a Year-Round permit for at least 25 years, or, 3) have held a municipal driving permit as a full time-employee for at least 25 years in order to provide a permit to those year-round residents who retire and may at some point no longer meet the definition of a year-round resident. For every three (3) current part time permits that are retired, one part-time permit may be granted to those meeting part (2) of the definition. When all original Part-Time permits (pre-1978) are retired, there will be no more than twenty-five (25) part-time permits. Part-time residents' driving times same as Year- round residents. *Further discussion is needed. Primary discussion needs to focus around the definition and permitting for municipal driving.*

Essential Service: any service other than a public utility whose service on the Island is essential to the continued use of residences on the Island. This includes transportation of heating fuel oil and bottled gas?, bulk fuel, and sanitation, construction debris, or refuse removal. Up to thirty (30) permits will be granted. *Further discussion is needed, particularly around bottled gas and fuel oil, including what can be transported via ferry or barge and what might use staging/storage areas on-Island.*

Contracting and Business: any business other than a public utility or essential service involved in the construction, maintenance, or repair of structures on the Island or the transportation of materials or supplies to year round retail business establishments on the Island. On-Island contractors are those who reside year-round on Fire Island and meet the definition of year-round resident as noted above. It is intended that this category would include plumbers and electricians. Up to one-hundred (100) permits will be granted. *Please note that the 100 number is adding 20 permits from essential services for plumbers and electricians.*

TC

These permit holders may drive from October 15 to May 1. *There was not agreement achieved on when contractors might drive, when adequate ferry service is "adequate" and sufficient, and how best to resolve this issue. One suggestion was to discourage driving later into the fall but allow driving closer to the early summer/late spring to allow homeowners to open and repair their homes.*

Municipal Employee: A year-round resident who is a full-time paid employee of one of the two incorporated villages or of one of the 15 unincorporated communities identified in the Act is eligible for a permit if such employment necessitates year-round Island residence. Up to thirty (30) permits will be granted. Municipal permit holders driving times same as Year- round residents. *The remaining issue is regarding unincorporated municipalities who need some kind of limited driving permit to inspect during winter months and conduct repairs.*

Official Business: any entity operating a motor vehicle operated and owned or leased by a federal, state, or local agency to transact official business (this does not include law enforcement, fire fighting or school buses). Up to twenty-five (25) permits will be granted. *There is a need to define "local agency."*

Special Permits: The Superintendent may issue "special permits" for short-term medical necessity, short-term major infrastructure construction by municipalities or utilities, maintenance, and upkeep of community property for those communities without full-time, paid, year-round resident employees. *There is a need to define "short-term."*

***I.J. Are there seasons and times when the National Park Service will allow driving on the ocean front beach?***

In order to preserve the unique character of the Seashore, protect natural resources, maintain visitor and resident safety and enjoyment during the peak visitors' season, no driving will be permitted during certain seasons of the year for specific categories of driving on the oceanfront beach. In order for this portion of the regulation to work, it is essential that certain driving times and dates are permitted and enforced fairly and consistently within permit classes. It should also be noted that the appropriate enforcement mechanism and enforcement entity for trips per day would have to be determined. The incorporated municipalities may further restrict driving times for all drivers or categories of permitted drivers in the interior of the Seashore as long as adequate primary transportation by water is available. *Note that these issues are covered in detail under definitions, driving times, and # of permits above in Section I.I.*

**II. A. Is the Suffolk County Police Department required to have a permit to drive on Fire Island?**

The Suffolk County Police Department will not be required a permit to drive on the Island. Police officers who drive or are likely to drive on Fire Island shall receive a driver's awareness training developed by the Park at least once a year.

Specific configurations of police activities other than emergencies will be resolved between the federal government and the SCPD apart from the work of this committee.

TC

## ***II. B. What size of vehicles is allowed to drive within the Seashore?***

Any vehicle that is permitted for regular travel is of such height, width, and weight to be able to travel inland routes to conduct their business or purpose in the event of impassable beach or beach closures. *Further discussion and recommendations from the communities and the carters is needed on this issue.*

### ***III.A. Can I drive on Fire Island without a permit?***

Most drivers cannot drive on Fire Island without a valid permit issued by the National Park Service. The only exceptions are NPS, Fire Island school buses, organized fire fighting entities, and federal, state and local law enforcement official vehicles having jurisdiction within the Seashore. Such non-permitted vehicles will be driven within the Seashore only while on official business and shall undertake the educational component described above for permitted drivers. *The practicalities of educating non-permitted driving need further discussion.*

### ***III.B. If I have a permit, where can I drive on Fire Island?***

All permitted drivers can drive anywhere designated as an off-road driving route in a compendium to these federal regulations. The off-road routes on the oceanside beaches and across federal land will be designated by the Park annually. The off-road routes through the communities shall be designated by the communities and forwarded to the Superintendent. Off-road driving is only permitted by federal law, guidance, and policy on routes specifically designated as such. Thus, any route that is not designated as an off-road driving route is not open to driving. *The practicalities of this effort need further discussion.*

### ***III.D. Can I drive if there is an emergency?***

In the event that there is an emergency involving the protection of life or a threatened substantial loss of property, permitted vehicles can be driven to protect life and substantial property. *The Committee did not discuss this given time constraints.*

### ***III.E. Can the Park suspend driving?***

Yes, the Park can suspend driving when such driving is inconsistent with the purpose of the Act or when such factors as weather, tides, and/or physical conditions render driving hazardous to life or limb or would endanger natural resources. Such suspension will be announced by the posting of easily visible signs or other effective notice such as letters to permit holders, phone calls, or emails. *The Committee did not discuss this given time constraints.*

### ***III.I. Are year-round and part-time permits transferable upon the death of a holder to husbands, wives, or life partners, as long as they meet the definition of a year round-resident?***

Yes. *The Committee did not discuss this given time constraints.*

### ***III.J. Are the limitations to year-round or part-time permits issued per household?***

One year-round or part-time permit is allowed per household with the sole exception of adult children living at home and meeting the definition of a year-round resident. *This needs further discussion to determine if children in college would be granted a separate permit from adult children living at home but working full or part-time.*

### ***III.L. What will permits look like?***

Permits will be issued as stickers to be affixed to the permitted vehicle. Stickers will clearly identify permit category and restrictions for each individual vehicle, (by color, number, or another easily visible means) for effective enforcement. *The practicalities of this effort need further discussion.*

## **REVISED DRAFT CONSENSUS LANGUAGE FROM MEDIATORS ON KEY ISSUE (FURTHER EXTENSIVE DISCUSSION NEEDED)**

### ***I. H. Are there geographic zones of the Seashore where the National Park Service will allow driving on the ocean front beach?***

The Seashore will be divided into three zones for the purposes of driving. The western zone will extend from the Lighthouse to the western edge of Sailor's Haven. The central zone will extend from the western edge of Sailor's Haven to the western edge of Watch Hill. The eastern zone will extend from the western edge of Watch Hill to the western edge of Smith Point Park.

- In the West, driving will be allowed as described under the seasonal allowances.
- In the Central Zone, driving will be allowed only on inland routes from March 15 to November 1 unless there is no inland route or until such time that an inland route is developed. In addition, any beach may be "symbolically fenced" in part or closed anytime to permitted driving, depending on the presence of endangered species and/or suitable endangered species habitat (FWS).
- In the East, permitted driving will be allowed only from November 1 to March 15 until such time as a shuttle or escort service is established. Until such time, the only driving allowed from 1 November to 15 March is for East End Year-Round Residents and Essential Services providing heating fuel and bottled gas, bulk gasoline and diesel that is not transportable via ferry. Contractors may drive during this time only in ice-over conditions.

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### **Public Comment**

Sidney Maddock of the Center for Biological Diversity reiterated his previous public comments and stated that because of the available legal tools and scientific research, he would like to see this Committee continue to try and reach consensus. He noted that visitors to Fire Island would enjoy no driving just as the communities would. He urged NPS not to concede jurisdiction to law enforcement as it has certain regulatory duties and it must abide by relevant statutory regulations. He stated that the issue of terrorism is not why we are here and further made the following points: 1) Terrorism is unlikely on the Seashore; 2) As a practical matter, there has been no post-911 issue with the breeding restriction, so why now, this year?; and 3) Under the Supremacy Clause of the Constitution, county government cannot violate federal law.

Jeanne Lynch congratulated the Committee on its effort and dedication and expressed hope that all remaining issues can be resolved.



## **Next Steps**

The mediators stated that the Committee can continue to work together and should decide how it will proceed. The Meeting Summary will be prepared and will reflect the work to date with no binding agreements. NPS stated that it still plans to develop an Environmental Assessment and has requested as much detail as possible from the Committee to assist in this effort.

NPS stated that it could organize subsequent meetings with subgroups of the Committee in order to close some gaps, and agreed that there is still room for the Committee to move forward.

The mediators stated the cost of one more two-day negotiating session would depend on the amount of work necessary to make the meetings worthwhile and suggested that subcommittees could meet prior to such a session to work on specific issues within the Draft Consensus Agreement to make the session more productive. The mediators agreed to provide a budget proposal for facilitating another two day session.

The Committee agreed to five subcommittees to work on the following:

1. Geographic Zones / Wilderness Area (Draft Consensus Agreement Section I.H.)
2. Non-Regulatory Board with Coordination/ Administration Function (Draft Consensus Agreement Section I.E.)
3. Definitions, Kinds of Driving, Dates & Times, Vehicle Size (Draft Consensus Agreement Sections I.I, I.J, II.B.)
4. Funding Resources to Continue/Subcommittee Steering/Coordination
5. Enforcement Technology (Research Options/Costs)

It was agreed that the subcommittees would use the Draft Consensus Agreement as the framework for their discussions.

The Committee chose the following dates for a potential fifth two-day negotiating session: Saturday, August 16 and Friday August 22, 2003. Regarding the meeting location, it was noted that an off-Island location would be better because of space concerns and that the location should be neutral.

## **Adjourn**

The Committee adjourned at approximately 5 PM.

## Documents Distributed During the Meeting\*

	<i><u>Title</u></i>	<i><u>Source</u></i>
1.	Draft Consensus Agreement (8 May 2003)	The Mediators
2.	Proposed Off-Road Vehicle Regulations Draft In-Progress; Modified to 4/28/03	Brookhaven, Islip Saltaire
3.	Letter to Fellow Stakeholders	Fire Island Ferries, Inc., Sayville Ferry Service, and Davis Park Ferry, Inc.
4.	Response of Carting Stakeholder Group to Various Position Statements and to Draft Consensus Agreement as Prepared by Mediators Dated April 21, 2003	

\*All documents distributed during meetings of the Negotiated Rulemaking Advisory Committee are available from:

Superintendent  
National Park Service  
Fire Island National Seashore  
120 Laurel Street  
Patchogue, NY 11772  
631 289-4810

## MEETING ATTENDANCE

**MAY 9, 2003**

<b><u>Name</u></b>	<b><u>Organization/Stakeholder Group</u></b>
<b>PRINCIPAL REPRESENTATIVES</b>	
Cannava, Ernest J.	Town of Islip
Clock, Forrest	On-Island Contractors
Esposito, Tom	Freight Companies
Finkenberg, Jack	Environmental Organizations
Gill, Anna Hannon	Village of Saltaire
Gillespie, Kevin	Fire Island Year-Round Residents
Goldhirsch, Suzy	West End Residents
Kassner, Jeffrey	Town of Brookhaven
Lund, John	East End Residents
Miller, Andrew	Village of Ocean Beach
Paradiso, Edward	Fire Island Law Enforcement Council
Read, Bill	Suffolk County Police Dept.
Reich, Walter C.	Island-Wide Stakeholders
Schwarz, Thomas	West End Residents
Stoddard, Gerry	Year Round/Seasonal Residents
Sullivan, Barry	National Park Service
Wikso, James	Off-Island Contractors

### **ALTERNATE REPRESENTATIVES**

Beqaj, Sedat	Town of Islip
Cassidy, Brian P.	Suffolk County Police Dept.
Hervey, Michael	Utility Companies - LIPA
Jacob, Guy	Visitors
Jerome, Beverly	West End Residents
Kuzman, Paul	Suffolk County Water Authority
Seymour, James	Environmental Organizations
Thornberg, Beatrice	FI Year Round Residents
Valentine, Wayne	National Park Service
Vogel, Peter	Carters
Weinstein, Arthur	West End Residents
Zaccaro, John Jr.	Village of Saltaire
Zysman, Joe	Environmental Organizations

### ***MEMBER ORGANIZATIONS/STAKEHOLDER GROUPS NOT REPRESENTED***

Fire Island Fire Chiefs Council  
Ferry Companies

## **TECHNICAL ADVISORS**

Papa, Steve  
Wintenberger, Elizabeth

US Fish & Wildlife Service  
Robert Moses/Captree State Park

## **NPS ADVISORS/STAFF**

Bilecki, Michael  
Lee, April  
Lepore, Robin  
Spirtes, David  
Valentine, Paula

National Park Service  
National Park Service  
DOI Office of Regional Solicitor  
Superintendent, NPS FIIS  
National Park Service

## **INDIVIDUALS WHO PROVIDED PUBLIC COMMENT**

Sidney Maddock

### **MAY 10, 2003**

<b><u>Name</u></b>	<b><u>Organization/Stakeholder Group</u></b>
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#### **PRINCIPAL REPRESENTATIVES**

Cannava, Ernest	Town of Islip
Clock, Forrest	On-Island Contractors
Farber, Laurie	Visitors
Esposito, Tom	Freight Companies
Gill, Anna Hannon	Village of Saltaire
Gillespie, Kevin	Fire Island Year-Round Residents
Goldhirsch, Suzy	West End Residents
Kassner, Jeffrey	Town of Brookhaven
Lund, John	East End Residents
Miller, Andrew	Town of Ocean Beach
Paradiso, Edward	Fire Island Law Enforcement Council
Read, William	Suffolk County Police Dept.
Reich, Walter C.	Island-Wide Stakeholders
Schwarz, Thomas	West End Residents
Stoddard, Gerry	Year Round/Seasonal Residents
Sullivan, Barry	National Park Service
Wikso, Jim	Off-Island Contractors

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Sidney Maddock  
Jeanne Lynch